

ENTERED

February 23, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

JOSE MARTIN VILLELA,

Petitioner,

VS.

BOBBY LUMPKIN,

Respondent.

§
§
§
§
§
§
§
§
§

Civil Case No. 6:21-CV-00060

ORDER ACCEPTING
FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the June 8, 2022 Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Mitchel Neurock. (Dkt. No. 17). In the M&R, Magistrate Judge Neurock made findings and conclusions and recommended that Respondent’s Motion for Summary Judgment be granted and a certificate of appealability be denied. (Dkt. No. 12).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On July 5, 2022, Petitioner filed three objections. (Dkt. No. 27). First, Petitioner objects to Judge Neurock’s conclusion his habeas petition is time-barred by the Antiterrorism and Effective Death Penalty Act (“AEDPA”). (*Id.* at 6–9). Second, Petitioner objects to Judge Neurock’s conclusion that neither statutory nor equitable tolling of AEDPA’s deadline applied to Petitioner’s case. (*Id.*). Third, Petitioner objects to Judge Neurock’s conclusion that Petitioner is actually innocent of his underlying offense. (*Id.*).


In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; see also Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Mitchel Neurock’s M & R (Dkt. 17) is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court; and
- (2) Defendants’ Motion for Summary Judgment (Dkt. 12) is **GRANTED**.

It is SO ORDERED.

Signed on February 23, 2023.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE